

REMARKS

The Applicants do not believe that examination of the response contained herein will result in the introduction of new matter into the present application for invention. Therefore, the Applicants, respectfully, request that this response be entered in and that the claims to the present application, kindly, be reconsidered.

The Office Action dated April 12, 2006 has been received and considered by the Applicants. Claims 1-11 are pending in the present application for invention. Claims 1-11 are rejected by the April 12, 2006 Office Action.

The Office Action provisionally rejects Claims 1, 2, 3, 7, 8, 9 and 10 on the grounds of non-statutory obvious-type double patenting as being unpatentable over Claims 7, 8, 3, and 9 of copending U.S. Application No. 10/524,179.

The Applicant, respectfully, requests that the rejection of Claims 1, 2, 3, 7, 8, 9 and 10 under the judicially created doctrine of obviousness-type double patenting be rescinded for the following reason. Copending U.S. Application No. 10/524,179 was filed on the same day as the present application for invention. Therefore, once the claims to U.S. Application No. 10/524,179 issue, they can be used as a basis for a double patenting rejection, but these claims cannot be treated as prior art. In making the aforementioned obvious-type double patenting rejection, the Examiner inherently states that the rejected claims to the present invention differ from that of that of U.S. Application No. 10/524,179 because, simply put, a same-invention, double patenting rejection has not been made. The Office Action alleges that the claims to the present invention are obvious in view of the claims to U.S. Application No. 10/524,179, however, the Examiner has cited no prior art, whatsoever, showing that the differences between the rejected claims of the present invention and the claims to U.S. Application No. 10/524,179 amount to an obvious modification of the claims to U.S. Application No. 10/524,179. Without a prior art recitation to substantiate an obvious-type double patenting rejection, there is no factual basis upon which the assertion of obviousness can be measured. Therefore, the double patenting rejection cannot stand. The foregoing analysis is clearly the rule regarding obvious type double patenting rejections and is a synopsis from a decision before the Board of Patent Appeals And Interferences, Appeal No. 1998-0425, Ex parte Frank L. Schmit, Lloyd Ewing and David T. Redmon, Application No. 08/272,527, pages 4-5.

Accordingly, the provisional rejection of Claims 1, 2, 3, 7, 8, 9 and 10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 7, 8, 3, and 9 of copending U.S. Application No. 10/524,179, is respectfully, traversed.

The Office Action rejects Claims 1, 2 and 7-11 under the provisions of 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 5,907,222 issued to Lengyel et al. (hereinafter referred to as Lengyel et al.) in view of U.S. Patent No. 6,089,739, issued to Yamamoto et al. (hereinafter referred to as Yamamoto et al.).

Regarding Claims 1, 2, 10 and 11, the Examiner's position is that Lengyel et al. teach the elements of the rejected claims except for the housing forming a dust proof space. The Examiner states that Yamamoto et al. teach a backlight device comprising fluorescent tubes housed in a dust proof space with the lamps abutting against the wall in a substantially dust proof manner. The Applicants, respectfully, point out that the combination of Lengyel et al. with Yamamoto et al. does not make a *Prima Facie* case of obviousness. The MPEP at §2143 states that basic requirements of a *Prima Facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

Initially, the Applicants assert that the combination made by the Office Action does not teach or suggest all the limitations of the rejected claims. The rejected claims define subject matter for the housing to form a substantially dustproof space, and in that part of the lamp extends outside the housing through a wall of the housing, which wall abuts against the lamp in a substantially dust-tight manner at the location where the lamp passes through the wall. Lengyel et al. discusses a back light system and with Yamamoto et al. The Examiner alleges that Lengyel et al. teaches that the lamp extends outside the housing wall. The Examiner's rationale is Figures 3A and 3B of Lengyel et al. The Applicants, respectfully, point out that Lengyel et al. do not teach that the lamp extends outside the housing wall. Lengyel et al. specifically teach that

lamp 14 is positioned within cavity 16 (see col. 9, lines 48-59). The Examiner is making assumptions that are not substantiated by the disclosure of Lengyel et al. Figures 3A and 3B of Lengyel et al. provide no disclosure or suggestion that the lamp 14 extends outside the housing wall. In fact, Figures 3A and 3B of Lengyel et al. clearly illustrate that lamp 14 is inside cavity 16. There is no disclosure or suggestion that the items in Figures 3A and 3B of Lengyel et al. that extend outside of the cavity 16 are part of the lamp 14. This is merely an assumption made by the Examiner that is not substantiated by the teachings of Lengyel et al. The disclosure of Lengyel et al. clearly states that lamp 14 is positioned within cavity 16 (see col. 9, lines 48-59). Yamamoto et al. teach to enclose lamps within a closed space 8. There is no disclosure or suggestion within either of the references to have a lamp that extends outside the housing wall.

The MPEP at §2143.01 states that if the "proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." The intended purpose of Yamamoto et al. is to enclose lamps 4 within space 8 and provide an open space 9 behind reflector 3 that cooling air can pass through (see col. 2, line 64-col. 3, line 40). The combination attempts to create a combination that would force Yamamoto et al. to pass the lamps 4 through the housing wall which would defeat the purpose of Yamamoto et al. for encapsulating the lamps within a closed space. Therefore, there is no suggestion to make the combination made by the rejection.

The MPEP at §2143.01 further states that if "the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." The principle of operation of Yamamoto et al. is to enclose lamps 4 within space 8 and provide an open space 9 behind reflector 3 that cooling air can pass through (see col. 2, line 64-col. 3, line 40). The combination attempts to create a combination that would force Yamamoto et al. to pass the lamps 4 through the housing wall which would change the principle of operation of Yamamoto et al. for encapsulating the lamps within a closed space. Therefore, there is no suggestion to make the combination made by the rejection.

In view of the foregoing this rejection is, respectfully, traversed.

The Office Action rejects Claims 3-6 under the provisions of 35 U.S.C. §103(a), as being unpatentable over Lengyel et al. in view of Yamamoto et al. and further in view of Japanese Patent Publication 06-273765A by Makoto et al. (hereinafter referred to as Makoto et al.). Makoto et al. teach that the lamps are contained within the housing and that air hole 11 allows air to pass and that a sealing member 16 is placed abutting air hole 16 to prevent dust from entering the housing. Therefore, the rejection does not establish a *prima facie* case of obviousness.

There is no disclosure or suggestion that the wall comprises a flexible material which abuts against the lamp. There is no disclosure or suggestion that the flexible material is a synthetic foam material. There is no disclosure or suggestion that the wall comprises two parallel plates, preferably metal plates, between which the flexible material is arranged. There is no disclosure or suggestion that the recesses in each of the metal plates are larger than the recesses in the flexible material, through which recesses the lamp extends. Therefore, this rejection is traversed.

The combination attempts to create a combination that would force Makoto et al. to pass the lamps through the housing wall which would defeat the purpose of Makoto et al. for enclosing the lamps within a closed space vented by an air hole. Therefore, there is no suggestion to make the combination made by the rejection.

The combination attempts to create a combination that would force Makoto et al. to pass the lamps through the housing wall which would change the principle of operation of Makoto et al. enclosing the lamps within a closed space vented by an air hole. Therefore, there is no suggestion to make the combination made by the rejection.

In view of the foregoing this rejection is, respectfully, traversed.

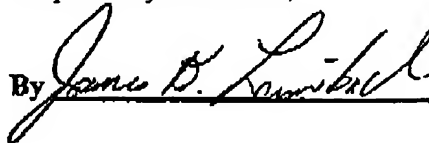
The foregoing amendment to the claim adds new claims 12-20 which are similar in scope to original claims 2-10. Therefore, the new claims 12-20 are believed to be allowable for the same reasons states above for claims 1-11.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

The Commissioner is hereby authorized to charge any fees associated with this response to Account No. 50-3745, including extension fees but excluding issue fees, and to credit any overpayments to the same account.

Respectfully submitted,

By 

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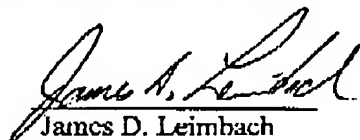
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